STATE OF MICHIGAN

COURT OF APPEALS

THE GEO GROUP, INC.,

Plaintiff-Appellant,

and

THE VILLAGE OF BALDWIN and WEBBER TOWNSHIP,

Plaintiffs,

v

DEPARTMENT OF CORRECTIONS and DEPARTMENT OF MANAGEMENT AND BUDGET,

Defendants-Appellees.

UNPUBLISHED
June 21, 2007

No. 273466
Court of Claims
LC No. 05-000194-MK

THE GEO GROUP, INC.,

Plaintiff,

and

THE VILLAGE OF BALDWIN and WEBBER TOWNSHIP,

Plaintiffs-Appellants,

v

DEPARTMENT OF CORRECTIONS and DEPARTMENT OF MANAGEMENT AND BUDGET,

Defendants-Appellees.

No. 273492
Court of Claims
LC No. 05-000194-MK

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

I. Overview

This contract case involves two consolidated appeals. In Docket No. 273466, plaintiff-appellant The Geo Group, Inc. (Geo Group), appeals by right the court of claims order granting summary disposition in favor of defendants Department of Corrections (DOC), and Department of Management and Budget (DMB). In Docket No. 273492, plaintiffs-appellants Village of Baldwin and Webber Township appeal by right the same court of claims order. This case stems from a contract entered into by Geo Group and defendants for the lease of a youth correctional facility located in Webber Township, near the Village of Baldwin. A dispute arose after defendants cancelled the lease because the Governor exercised a line-item veto of the appropriation concerning the lease.

II. Basic Facts And Procedural History

In 1996, the Michigan Legislature authorized the DOC to establish a youth correctional facility and to contract with a private vendor for the construction or operation, or both, of the facility.[1] The legislation required that the contract between the DOC and the private vendor be contingent on appropriations and that siting of the facility be contingent on community approval by formal resolution.[2] Pursuant to this legislation, defendants issued an invitation to bid for the operation and construction of the 480-bed facility for violent offenders through the age of 19.[3]

The bid package circulated to prospective bidders contained a proposed lease. Consistent with the statutory mandate that any contract for the facility be contingent on appropriations, included among the lease terms was an "executive cancellation clause" that allowed the state to cancel the contract at any time for non-appropriation. This clause, which permitted the state's unilateral cancellation of the lease, stated as follows:

> 10.1 – This Lease may be cancelled by the Lessee during any period of possession if:
>
> * * *
>
> 1) An Executive determination has been made that the Purpose for which the Lease was entered into no longer exists, or that sufficient funds do not exist for meeting the rental obligations of the occupying State agency or department.

In response to concerns expressed during the bidding process, defendants later amended the proposed lease, changing the "executive cancellation clause" to a "legislative cancellation clause," which provided as follows:

---

[1] MCL 791.220g(1) and (5).

[2] MCL 791.220g(6) and (7).

[3] MCL 791.220g(5)(a).

> The Lessee shall pay its rental obligations under this Lease out of funds lawfully appropriated to the Department of Corrections for its general use of such purposes as rents, contracts, services, supplies and material. However, in the event that such lawful appropriations for these purposes are made with a specific prohibition against their use for this Lease, the Lessee may cancel this Lease, provided the Lessor is notified in writing, at least sixty (60) days prior to the effective date of the cancellation.

From the responsive bids, defendants chose Geo Group, through its predecessor Wackenhut Corrections Corporation,[4] as the winning bidder. Geo Group is a Florida corporation engaged in the business of constructing and operating privatized correctional and detention facilities.

Defendants and Geo Group entered into a design/build lease agreement for the construction of the Youth Correctional Facility in Webber Township, near the Village of Baldwin, both of which are located in Lake County, Michigan. Defendants and Geo Group also entered a separate contract to operate the facility. The lease became effective September 1, 1999. Pursuant to the lease terms, Geo Group purchased real property and constructed the facility in accordance with defendants' specifications, which cost $37 million. The parties intended that Geo Group would recoup its construction costs, capital investments, cost of capital, property taxes, and maintenance costs through rent payments during the 20–year lease period. Article V, § 5.3 of the lease provided that the annual rental rate was based on financing costs for construction, plus facility maintenance and property taxes. Webber Township and the Village of Baldwin expended millions of dollars on infrastructure improvements, including water and sewage systems, to support the facility.

Six years later, in September 2005, the Legislature presented an annual appropriations bill (HB 4831) to the Governor. HB 4831 specifically appropriated $18,840,700 for the Michigan Youth Correctional Facility,[5] as follows:

Michigan youth correctional facility – management services	13,317,800
Michigan youth correctional facility – administration--1.0 FTE positions	156,200
Average population	480
Michigan youth correctional facility - lease payments	5,366,700

When the Governor signed HB 4831, she exercised her line-item veto power[6] on all three of the Michigan Youth Correctional Facility appropriations. She did not, however, veto any of

---

[4] Wackenhut Corrections Corporation changed its name to The Geo Group, Inc. in November 2003.

[5] HB 4831, p 150.

[6] Const 1963, art 5, § 19.

the other general use appropriations, such as the line item designating $2,054,000 for rent. Although constitutionally permitted to do so, the Legislature did not override the vetos.[7] As officially presented as a public act,[8] Article 4, § 103 of HB 4831 was modified to show that one specific line-item appropriation had been vetoed:

> Michigan youth correctional facility - lease and management contracts—1.0 FTE position..... 17,840,70[9]

Because state funds may neither be spent without a valid appropriation[10] nor spent on a vetoed purpose,[11] the DMB cancelled the facility lease agreement with Geo Group, effective December 2, 2005. At the time of cancellation, the lease payments totaled $5,309,607 annually, payable in monthly installments. Also at that time, Geo Group employed 229 people at the prison, including 119 officers. After sending the letter, defendants began taking steps to relocate the prisoners that were then confined in the facility. Geo Group tried to market the facility to other detention agencies, but it was unsuccessful because of the remote location and "the relatively high cost of recovering Geo Group's investment."

In November 2005, Geo Group, the Village of Baldwin, and Webber Township filed suit, alleging five counts. Geo Group's claims included: (1) declaratory relief concerning its rights under the lease, (2) breach of contract with respect to the lease agreement, and (3) inverse condemnation. The Village of Baldwin and Webber Township each alleged one count for promissory estoppel.

In its claim for declaratory relief, Geo Group noted that Article X, § 10.1 of the lease required defendants to pay rent out of the DOC's general funds. Geo Group then alleged that HB 4831 did not contain a specific prohibition against use for the lease of the general funds appropriated to the DOC for rents and services. Thus, Geo Group requested a declaratory judgment that the conditions of the cancellation had not been satisfied and that defendants remained obligated to make rent payments and otherwise fulfill their obligations under the lease. With respect to its breach of contract claim, Geo Group alleged that, by its terms, the lease could only be cancelled by the Legislature specifically and affirmatively agreeing to prohibit discharge the lease obligations. Geo Group alleged that defendants therefore breached the lease by canceling it without the specific conditions of cancellation having been met. For its inverse

---

[7] Const 1963, art 4, § 33.

[8] 2005 PA 154.

[9] Apparently, the $18,840,700 appropriation was adjusted downward $1,000,000 during conference. House Legislative Analysis, HB 4831, p 8, September 20, 2005; Senate Legislative Analysis, HB 4831, p 6, September 20, 2005.

[10] Const 1963, art 9, § 17 ("No money shall be paid out of the state treasury except in pursuance of appropriations made by law.").

[11] MCL 18.1369 ("A distinct item or items vetoed by the governor that are not subsequently overridden by the legislature shall not be funded from any other source without a new specific appropriation.").

condemnation claim, Geo Group alleged that it had no other economically viable use for the property and that defendants deprived it of its investment-backed expectations. Thus, Geo Group alleged that it was entitled to just compensation for the damages suffered by defendants' unlawful taking.

Regarding its claim for promissory estoppel, Webber Township alleged that defendants induced it to approve the facility project in its community by promising a long-term relationship that would create jobs, stimulate economic growth, and fuel infrastructure improvements. Webber Township alleged that it relied on this promise and agreed to construct a water plant, water tower, sewer system, and lift station for the primary purpose of servicing the facility. Webber Township alleged that, in addition to being burdened with these now unaffordable expenditures, defendants' cancellation of the lease cost Webber Township 37 percent of its property tax budget. Webber Township also alleged that as a result of the facility's placement in its community, it passed a fire millage and purchased two new fire trucks. The closure of the prison, however, greatly reduced the millage making the township unable to pay its debts on the fire trucks and detrimentally affecting its ability to operate the fire department. Webber Township alleged that it would suffer irreparable harm if the lease cancellation were not enjoined. The Village of Baldwin made similar allegations based on its construction of a wastewater treatment plan to service the facility.

The Village of Baldwin and Webber Township moved for a preliminary injunction to enjoin defendants from breaching the lease with Geo Group. The court of claims denied that motion, ruling that, although the village and township had suffered irreparable harm, it was unlikely that they would prevail on the merits of their promissory estoppel claims.

Defendants moved for summary disposition, arguing that the Governor's veto of the line item appropriations for the facility did not breach the state's lease with Geo Group because the veto was the necessary specific prohibition against using the appropriations for the lease. Defendants also argued that cancellation of the lease did not constitute an inverse condemnation of Geo Group's property because exercising a contractual right cannot be regarded as a government taking of private property for public use. Defendants argued that Webber Township's and the Village of Baldwin's claims for promissory estoppel lacked merit because they failed to demonstrate the existence of a definite and clear promise that the contract would be a long-term, non-cancelable lease.

The court of claims granted defendants' motion for summary disposition but permitted plaintiffs to amend the complaint to state a claim for misrepresentation. The court of claims found unpersuasive Geo Group's argument that legislative appropriation followed by a Gubernatorial veto could not grant to the state the right to cancel its contract in this particular context. The court reasoned that no authority existed to permit state agents to either abrogate the authority of the legislature or the Governor, or limit the effect of specific statutory Constitutional provisions. Indeed, the court explained, Const 1963, art 9, § 17, Const 1963, art 5, § 19, and MCL 18.1369 absolutely prohibited any further funds from being spent on the facility pursuant to the Governor's line-item veto. The court concluded that Geo Group was charged with knowledge of defendant's limits of authority. With respect to Webber Township and the Village of Baldwin, the court acknowledged that the communities suffered significant financial losses from the facility's closing, but the court could not overlook that the types of alleged

representations made could not be sustained in light of constitutional limitations on state agents' abilities to bind the state.

In a second amended complaint, Geo Group reiterated its original three claims and then added four new counts: reformation, rescission for mutual mistake, rescission for fraudulent inducement, and misrepresentation. For each theory, Geo Group alleged that it was the parties' mutual intent that Geo Group would fully recoup its costs associated with the facility over the life of the lease. Geo Group alleged that if it had known that the lease could be cancelled by anything other than affirmative legislative action, then it would have required payment sufficient to recoup its costs at the inception of the lease or it would have required higher lease payments. Geo Group alleged that it should now be able to recoup its lost costs.

While its new claims were pending, Geo Group moved for reconsideration of the court's order granting defendants summary disposition. Geo Group argued that the court of claims erred in concluding that the Governor's veto of the funding operated to cancel the lease. Further, although not having briefed the argument previously, Geo Group argued that the court of claims erred in not considering application of the "unmistakably doctrine," under which the government may contractually abrogate a sovereign power by stating so in the contract using clear and unmistakable terms. The court of claims denied the motion on the ground that it merely rehashed the same issues decided in the previous order.

Defendants moved for summary disposition again, first arguing that Geo Group's claims for declaratory judgment, breach of contract, and inverse condemnation should be dismissed because the court had already granted defendants summary disposition on those claims. Defendants then argued that there could have been no mistake about the Governor's constitutional power to veto appropriations, which could not be abrogated by contract. Defendants argued that, if the court were to reform the contract so that the appropriations for the rental payments were not subject to the Governor's veto, then the lease would be unconstitutional.

After the hearing on the motion for summary disposition, the court of claims granted defendants' second motion for summary disposition, denied Geo Group's request to amend its second amended complaint, and denied Geo Group's motion to compel production of documents as moot. Geo Group now appeals.

III. Summary Disposition

A. Standard Of Review

Where, as here, the trial court grants a motion for summary disposition brought pursuant to both MCR 2.116(C)(8) and (C)(10), and it is clear that the court looked beyond the pleadings, this Court "will treat the motions as having been granted pursuant to MCR 2.116(C)(10)," which "tests whether there is factual support for a claim."[12] Under MCR 2.116(C)(10), a party may

[12] *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

move for dismissal of a claim based on the ground that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. The moving party must specifically identify the undisputed factual issues, and support its position with affidavits, depositions, admissions, or documentary evidence.[13] When reviewing the motion, the trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.[14]

We review de novo the trial court's ruling on a motion for summary disposition.[15] We review de novo constitutional issues.[16] We also review de novo clear contract language.[17] "We review equity cases de novo, but we will not reverse or modify the judgment unless convinced that we would have reached a different result had we occupied the position of the trial court."[18]

B. Breach Of Contract

When presented with a contractual dispute, a court must read the contract as a whole with a view to ascertaining the intention of the parties, determining what the parties' agreement is, and enforcing it.[19] Absent ambiguity, a contract must be construed to adhere to its plain and ordinary meaning.[20] Technical and constrained constructions are to be avoided.[21]

In its brief on appeal, Geo Group argues that the cancellation provision was changed from an executive cancellation provision to a legislative cancellation provision with the specific purpose of ensuring that Geo Group would receive full repayment of its construction costs over a 20-year period. To this end, Geo Group initially argues in its brief that it entered the lease based on defendants' representations and warranties that the lease cancellation provision contractually precluded the Governor from exercising her constitutional veto power in relation to the lease. Geo Group later clarifies that the lease did not *actually* contractually limit the Governor's line-item veto power—"rather it *limited the effect* of such a veto on the State's obligations under the Lease."[22] Geo Group asserts that "while the Governor's veto may have made it more difficult

---

[13] MCR 2.116(G)(3)(b); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

[14] MCR 2.116(G)(5); *Maiden*, *supra* at 120.

[15] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[16] *Tolksdorf v Griffith*, 464 Mich 1, 5; 626 NW2d 163 (2001).

[17] *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

[18] *Casey v Auto Owners Ins Co*, 273 Mich App 388, 394; 729 NW2d 277 (2006).

[19] *Detroit Trust Co v Howenstein*, 273 Mich 309, 313; 262 NW 920 (1935); *Whitaker v Citizens Ins Co*, 190 Mich App 436, 439; 476 NW2d 161 (1991).

[20] *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998).

[21] *Id*.

[22] (Emphasis added).

for Defendants to meet their payment obligations under the Lease, it did not excuse their payment obligations and did not give them the right to cancel the Lease."[23]

While Geo Group's latter assertions may technically be true—the Governor's veto power did not directly operate to cancel the contract—as will be discussed below, contrary to Geo Group's contentions, the Governor's veto *did* have the effect of excusing defendants' payment obligations and *did* give them the right to cancel the Lease. This case boils down to the fact that Geo Group understood that the lease was subject to cancellation for lack of appropriations—to argue that the lease was not properly cancelled because the Governor, rather than the Legislature, made the decision that there was not enough funding has no foundation under the circumstances of this case.

MCL 791.220g(1) provides that the DOC "may establish a youth correctional facility . . . ." To this end, MCL 791.220g(5) states, "The department . . . may contract on behalf of the state with a private vendor for the construction or operation, or both, of the youth correctional facility." Geo Group argues that, by passing MCL 791.220g and granting the DOC power to contract for the facility, the Legislature expressed its intent that the DOC be bound by any such contract. There can be no dispute that this is a true statement. However, there can also be no dispute that when it accepted the terms of the contract, Geo Group was on notice that the lease was contingent on funding. MCL 791.220g(6) clearly states, in pertinent part, as follows: "A contract between the department and a private vendor for the construction or operation of the youth correctional facility *shall be contingent upon appropriation of the required funding*."[24] Therefore, the Legislature's intent that the DOC be bound to the contract was expressly statutorily limited. Geo Group was on notice that the lease was statutorily subject to cancellation for lack of appropriations, irrespective of the ultimate decision maker.

Nevertheless, Geo Group argues that the type of "legislative cancellation clause" used in the subject lease has been construed to mean that the state may only cancel the Lease if the *Legislature*, by affirmative act, prohibits the DOC from spending funds appropriated for the payment of rent under this specific lease. In other words, Geo Group argues that the cancellation clause requires that the Legislature insert a specific prohibition against use of funds for the lease into the appropriations bill. However, the cancellation clause does not require the *Legislature* to insert a specific prohibition in the appropriations bill. The language of the clause—"in the event that such lawful appropriations for these purposes are made with a specific prohibition against their use for this Lease, the Lessee may cancel this Lease"—simply contemplates lawful appropriations made with a specific prohibition against use of funds for the lease. The cancellation clause does not by it plain terms preclude the Governor from rendering that specific prohibition.

Indeed, the Michigan Supreme Court has indicated that the Governor's veto may serve as a specific prohibition against the use of the appropriated funds for the facility. In *Wood v State Administrative Bd*, the Court explained that the Governor's "veto power is a legislative function,

---

[23] (Emphasis original).

[24] (Emphasis added).

although it is not affirmative and creative, but is strictly negative and destructive."[25] Thus, the Governor may alter legislation by exercising the veto power to disapprove certain line items.[26]

Geo Group argues that there was still money available in other general fund appropriations to pay the lease. But as defendants point out, once the Governor vetoed the facility line items, MCL 18.1369 precluded payment of the lease under any other appropriation. MCL 18.1369 states as follows:

> A distinct item or items vetoed by the governor that are not subsequently overridden by the legislature shall not be funded from any other source without a new specific appropriation.

This provision of the Management and Budget Act is rooted in Const 1963, art 9, § 17 and Const 1963, art 5, § 19. Section 17 states as follows: "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." Section 19, which constitutionally authorizes the Governor to disapprove distinct items in appropriation bills, states as follows:

> The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto.

To hold that the facility may be funded out of other line-item appropriations would not only impermissibly frustrate the Governor's specific decision to cancel funding for the facility but would also be statutorily and constitutionally impermissible in the absence of a legislative override or a new specific appropriation. The Governor's use of her veto power on the line item appropriation for the facility leaves no valid appropriation for any purposes associated with the facility. To require the state to expend the general use funds for a vetoed purpose would be contrary to law under Const 1963, art 5, § 19; Const 1963, art 9, § 17; and MCL 18.1369.

Geo Group nevertheless argues that MCL 18.1369 did not bar funding of the lease because, when HB 4831 became law *after* the Governor's veto, the general use appropriations constituted "new specific appropriations." This argument lacks merit. The fact that the remaining non-vetoed portions of HB 4831 officially became effective after the Governor exercised her veto power on one part of the bill, simply did not make those general fund portions "*new*" appropriations. To create a "new specific appropriation," as referred to in MCL 18.1369, would have required the Legislature to propose a new bill or amend the existing bill to add new terms.

Geo Group goes on to argue that, even assuming the remaining portions of HB 4831 were not new specific appropriations under MCL 18.1369, that statute "operates only to prevent the State from funding the Lease from another source." According to Geo Group, "MCL 18.1369

---

[25] *Wood v State Admin Bd*, 255 Mich 220, 224; 238 NW 16 (1931).

[26] *Id.* at 224-225.

does not authorize Defendants to cancel a contract because the Governor has denied funding." Thus, Geo Group is apparently arguing that the state should have continued the lease even though it lacked funding to make its payments. We fail to see the point to continuing the lease in the absence of the required appropriations from which to make the lease payments. Regardless, we must defer to the controlling statutory mandate that the contract be contingent upon appropriation of the required funding. Simply put, there was no appropriation of the required funding; thus, defendants were entitled to cancel the contract.

In its ruling below, the court of claims cited *Sittler v Bd of Control*[27] to support its conclusion that defendants, nor its agents, had no authority to contract away the Governor's veto power. In *Sittler v Bd of Control*, the plaintiff filed suit alleging unlawful termination against the board of control of the Michigan college of mining and technology, claiming that the head of the department of languages had authority to make a contract on behalf of the board of control.[28] By statute, the board of control had authority to enter into employment contracts to hire teachers.[29] Although *Sittler* involved an alleged employment contract rather than a lease agreement, its reasoning is applicable to this case because, as the Michigan Supreme Court explained, at its core *Sittler* "involved the right by contract to bind the State in the operation of [a government function] over a period of time and to expend public funds in greater or less amounts."[30] Here, this case involves the right by contract to bind the state in the operation of a correctional facility over a period of time and to expend public funds in greater or less amounts.

According to the *Sittler* Court, the power to contract vested by statutory provision in a government agency cannot be delegated to some subordinate or representative.[31] "'The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority.'"[32] The Court explained:

> Public officers have and can exercise only such powers as are conferred on them by law, and a State is not bound by contracts made in its behalf by its officers or agents without previous authority conferred by statute or the Constitution.
>
> * * *
>
> Nor is a State bound by an implied contract made by a State officer where such officer had no authority to make an express one.
>
> * * *

---

[27] *Sittler v Bd of Control*, 333 Mich 681; 53 NW2d 681 (1952).

[28] *Id.* at 683.

[29] *Id.* at 684-685; see MCL 390.352.

[30] *Id.* at 686.

[31] *Id.*

[32] *Id.* at 687, quoting *Lake Twp v Millar*, 257 Mich 135, 142; 241 NW 237 (1932).

> The powers of State officers being fixed by law, all persons dealing with such officers are charged with knowledge of the extent of their authority or power to bind the State, and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred.[33]

Thus, *Sittler* makes clear that Geo Group was charged with knowledge that defendants could not contract away the Governor's constitutional veto power and that the contract was statutorily contingent on appropriations, irrespective of whether the availability of those appropriations was determined by affirmative legislative action or executive veto action.

To counter *Sittler*, Geo Group argues that, under the unmistakability doctrine, the lease terms clearly and unmistakably limited the Governor's power to cancel the contract. Geo Group's argument lacks merit. In *United States v Winstar Corp*,[34] the United States Supreme Court explained that "when the government enters into a contract with a private person, the government is not precluded from acting in its sovereign capacity notwithstanding the contract unless there is an unmistakable promise not to act."[35] The unmistakability doctrine "requires that a contract purportedly binding a state to contractual obligations despite later legislative amendments to clearly indicate its intent to be so bound[.]"[36] "Sovereign power . . . governs all contracts subject to the sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms."[37] Thus, under the doctrine, to be valid, a government's abrogation of a sovereign power must be clear and unmistakable. Here, nothing in the cancellation clause or the lease contract as a whole clearly and unmistakably limits the Governor's veto power.

Geo Group argues that effectively allowing the Governor to cancel a contract via her veto power abrogates the Legislature's power to contract, and gives the Governor "unfettered power" to cancel any contract lawfully made by the Legislature. This argument is overly broad. Upholding cancellation in this case does not set precedent for the Governor to cancel *any* contract—only those contracts which include a cancellation clause subjecting the agreement to availability of lawful appropriations.

We are obligated to "construe contracts that are potentially in conflict with a statute, and thus void as against public policy, where reasonably possible, to harmonize them with the statute."[38] As stated, MCL 791.220g(6) clearly states, in pertinent part, as follows: "A contract between the department and a private vendor for the construction or operation of the youth correctional facility *shall be contingent upon appropriation of the required funding.*" The statute does not place the decision regarding availability of appropriations for the contract in the

---

[33] *Sittler, supra* at 687 (citations omitted).

[34] *United States v Winstar Corp*, 518 US 839; 116 S Ct 2432; 135 L Ed 2d 964 (1996).

[35] *First Nationwide Bank v United States*, 431 F3d 1342, 1351 (CA Fed 2005).

[36] *Doe v Pataki*, 481 F3d 69, 83-84 (2d Cir NY 2007).

[37] *Winstar, supra* at 872 (citations omitted).

[38] *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002).

Legislature's hand alone, and, as stated, it is understood that all appropriations are subject to gubernatorial veto. Thus, we are obligated to construe the lease cancellation clause in harmony with the statute, thereby concluding that the Governor's veto had the effect of excusing defendants' payment obligations and gave them the right to cancel the Lease.

We conclude that the trial court properly granted defendants summary disposition on Geo Group's breach of contract and declaratory judgment claims because defendants were entitled to cancel the lease contract in the absence of appropriations, regardless that the lack of appropriations was the result of gubernatorial veto rather than affirmative legislative action.

C. Reformation And Rescission

Geo Group argues that the court of claims erred in dismissing its claim for reformation because the lease does not accurately reflect the true intent of the parties: that defendants fully compensate Geo Group for all its construction costs related to the facility before cancellation of the lease. According to GEO Group, absent reformation, defendants were unjustly enriched by having received the full benefit of the facility for six years at only a fraction of the total cost. Geo Group contends that if it had known that the lease could be cancelled by any method other than affirmative legislative action, then it would have required a large sum up front or larger lease payments. We find no merit to this argument.

"[R]eformation [is] proper so as to carry out the express actual intent of the parties where the evidence is clear that both parties had reached an agreement and, as a result of mutual mistake or mistake on one side and fraud on the other, the instrument did not express the true intent of the parties."[39] A plaintiff's subjective misunderstanding of information that is not objectively false or misleading is insufficient to prove fraud.[40]

The legislative cancellation clause was only one of several cancellation clauses in the lease. Thus, Geo Group was on notice that the lease was subject to cancellation for one of various reasons before the end of the full 20-year term. Geo Group has not shown that there was a mutual mistake of fact or that defendants concealed any purported mistake of fact regarding the cancelability of the lease. Moreover, as discussed above, MCL 791.220g put Geo Group on notice that the lease contract was always subject to annual appropriations. And appropriations are always constitutionally subject to the Governor's veto. Geo Group's belief that the Governor could not veto the appropriations was a mistake of law for which reformation is not an appropriate remedy.[41] Additionally, the state was not unjustly enriched because there is no dispute that defendants paid all of the rental obligations through the effective cancellation date of the lease.

---

[39] *Blake v Fuller*, 274 Mich 534, 538; 265 NW 455 (1936); *Capitol Savings & Loan Ass'n v Przybylowicz*, 83 Mich App 404, ___; 268 NW2d 662 (1978).

[40] *Hord v Environmental Research Institute of Mich* (*After Remand*), 463 Mich 399, 411; 617 NW2d 543 (2000).

[41] *Casey, supra* at 398.

Geo Group's claim for rescission similarly fails. Rescission may be granted where a mutual mistake of law or fact has unjustly enriched a party to the contract.[42] As stated, defendants have not been unjustly enriched.

We conclude that the trial court properly granted defendants summary disposition on Geo Group's claims for reformation and rescission.

D. Inverse Condemnation

Geo Group argues that the court of claims erred in dismissing its claim for inverse condemnation. According to Geo Group, defendants' cancellation of the contract calling for the construction of a special use facility in a remote location 13 years before the expiration of the lease term constitutes a taking for public use because cancellation substantially destroyed the facility's utility and caused the property to significantly diminish in value.

Const 1963, art 10, § 2 requires that private property taken for a public use cannot be taken without just compensation. "Inverse condemnation is a taking of private property for a public use without the commencement of condemnation proceedings."[43] A taking does not require an actual physical invasion of the property, but a pertinent factor to consider is "whether 'the governmental entity abused its exercise of legitimate eminent domain power to plaintiff's detriment.'"[44] "A plaintiff alleging a de facto taking or inverse condemnation must prove 'that the government's actions were a *substantial* cause of the decline of his property's value' and also 'establish the government abused its legitimate powers in affirmative actions directly aimed at the plaintiff's property.'"[45] "While there is no exact formula to establish a de facto taking, there must be some action by the government specifically directed toward the plaintiff's property that has the effect of limiting the use of the property."[46]

The state exercising its contractual right of cancellation simply does not constitute a governmental taking of private property for public use. Therefore, the trial court properly granted defendants summary deposition on Geo Group's inverse condemnation claim.

E. Discovery Not Yet Complete

Geo Group argues that the court of claims erred in granting defendants summary disposition because discovery was not complete.

---

[42] *Lowry v Collector of Internal Revenue*, 322 Mich 532, 540-541; 34 NW2d 60 (1948).

[43] *Hart v Detroit*, 416 Mich 488, 494; 331 NW2d 438 (1982).

[44] *Hinojosa v Dep't of Natural Resources*, 263 Mich App 537, 548; 688 NW2d 550 (2004), quoting *Heinrich v Detroit*, 90 Mich App 692, 698; 282 NW2d 448 (1979).

[45] *Hinojosa, supra* at 548, quoting *Heinrich, supra* at 700 (emphasis in *Heinrich*).

[46] *Charles Murphy, MD, PC v Detroit*, 201 Mich App 54, 56; 506 NW2d 5 (1993).

Summary disposition is generally premature when discovery on disputed issues has not been completed.[47] However, summary disposition before the close of discovery is appropriate where there is no reasonable chance that further discovery will result in factual support for the nonmoving party.[48] "The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position."[49] A party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence.[50] Conjectures, speculations, conclusions, mere allegations or denials, and inadmissible hearsay are not sufficient to create a question of fact for the jury.[51]

Geo Group has failed to demonstrate that discovery on a disputed issue has not been completed. Geo Group already amended its complaint twice and defended (albeit unsuccessfully) two summary disposition motions. Geo Group has not identified nor supported with independent evidence any further disputed issues. Regardless, in this issue based on interpretation of the plain language of contract, statute, and constitutional provision, there is no reasonable chance that further discovery will result in factual support for Geo Group's claims.

Geo Group also argues that the court of claims should have permitted it to amend its complaint because such amendment would be justified based on facts that further discovery would reveal. We disagree. Geo Group has not presented the court with any basis on which to conclude that further amendment of its pleadings would be justified.

We conclude that the trial court neither erred in granting summary disposition before discovery was complete nor in denying Geo Group another opportunity to amend its complaint.

F. Promissory Estoppel

Webber Township and the Village of Baldwin argue that the court of claims erred in dismissing their claims for promissory estoppel. According to the township and village, defendants' representations of economic growth induced the township and village to make significant infrastructure improvements. After defendants cancelled the lease, the township and village suffered because they could not longer financially support the improvements without the presence of the prison.

---

[47] *Colista v Thomas*, 241 Mich App 529, 537; 616 NW2d 249 (2000).

[48] *Id.* at 537-538.

[49] *Dep't of Social Services v Aetna Casualty & Surety Co*, 177 Mich App 440, 446; 443 NW2d 420 (1989).

[50] *Pauley v Hall*, 124 Mich App 255, 263; 335 NW2d 197 (1983).

[51] *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995); *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995); *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994); *SSC Assoc Ltd Partnership v Detroit Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

> The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided.[52]

"To be sufficient to support an estoppel, a promise must be definite and clear."[53] In determining whether a requisite promise existed, we must objectively examine the words and actions surrounding the transaction in question as well as the nature of the relationship between the parties and the circumstances surrounding their actions.[54]

Webber Township and the Village of Baldwin have failed to demonstrate a definite and clear promise to maintain a long-term, non-cancelable lease of the facility. The DOC director did represent to the village and township that the facility would create jobs and fuel infrastructure improvements, but he did not, and could not, promise that the lease would never be cancelled.

"The authority of an agent to bind the principal may be either actual or apparent."[55] Apparent authority may arise when acts and appearances lead a third party reasonably to believe that an agency relationship exists, but the authority must be traceable to the principal and cannot be established by the acts and conduct of the agent.[56] In determining whether an agent possess apparent authority to perform a particular act, we must look to all surrounding facts and circumstances.[57] The law is also clear that a principal is not bound where the agent exceeds the scope of his apparent authority and the agent's lack of authority is known or should be known to the person with whom the agent is dealing.[58]

When dealing with state officials, a plaintiff seeking to bind the state to a contract must prove that the individuals who entered into the contract on behalf on the state acted with specific statutory or constitutional authority.[59] Here, the village and the township claim an implied contract for the creation of jobs and economic growth in exchange for siting the prison in their communities. But the state cannot be bound by an implied contract entered into by a state officer where that officer had no authority to enter an express contract.[60] The extent of a public officer's

---

[52] *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173; 568 NW2d 365 (1997).

[53] *McMath v Ford Motor Co*, 77 Mich App 721, 726; 259 NW2d 140 (1977).

[54] *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999).

[55] *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992).

[56] *Id.* at 698-699.

[57] *Id.*

[58] *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 667; 66 NW2d 92 (1954).

[59] *Sittler, supra* at 687.

[60] *Id.*

authority is measured by the statute from which they derive their authority and not by their own acts and assumptions of authority.[61] Nothing in MCL 791.220g granted the DOC Director any authority to promise job creation and economic growth.

We conclude that the trial court properly granted defendants summary disposition on Webber Township's and Village of Baldwin's promissory estoppel claims because the township and village have failed to demonstrate a definite and clear promise by an authorized agent to maintain a long-term, non-cancelable lease of the facility.

IV. Conclusion

We conclude that the trial court properly granted defendants summary disposition on all of Geo Group's claims. Defendants were entitled to cancel the lease contract in the absence of appropriations, regardless that the lack of appropriations was the result of gubernatorial veto rather than affirmative legislative action. There was no mutual mistake, or mistake on the one side and fraud on the other, and defendants were not unjustly enriched. Exercise by the state of its contractual right of cancellation does not constitute a governmental taking of private property for public use. And there is no reasonable chance that further discovery will result in factual support for Geo Group's claims. We further conclude that the trial court properly granted defendants summary disposition on Webber Township's and Village of Baldwin's promissory estoppel claims because the township and village have failed to demonstrate a definite and clear promise by an authorized agent to maintain a long-term, non-cancelable lease of the facility.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff

[61] *Lake Twp, supra* at 142.